

**UNITED STATES DISTRICT COURT for the  
WESTERN DISTRICT OF NEW YORK**

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TURF NATION, INC.,

Plaintiff,

Civil Action No.: 1:17-cv-00534

vs.

PLATTE RIVER INSURANCE COMPANY,

Defendant.

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**CIVIL ACTION – NOTICE OF REMOVAL**

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Defendant Platte River Insurance Company (“Platte River”), a corporation of the State of Nebraska maintaining its principal place of business at 1600 Middleton Commons, Suite 300 Middleton, Wisconsin, and authorized to issue surety bonds within the State of New York, hereby files this Notice of Removal of the above-described action to the United States District Court for the Western District of New York, from the Supreme Court of the State of New York, County of Erie, where the action is now pending, and respectfully states:

1. This action involves the alleged entitlement to payment as a third-party beneficiary of a payment bond issued by Platte River on behalf of UBU Sports, Inc. as principal, Payment Bond Number 41328330 (“Payment Bond”) in connection with a contract between UBU Sports, Inc. and the County of Erie for Ralph Wilson Stadium 2016 – Adpro Field House Artificial Playing Surface Replacement, Project No. JZ-16-04.

2. Upon information and belief, Plaintiff Turf Nation, Inc. is a Delaware corporation with a principal place of business located at 3525 Old Dixie Highway, Dalton, Georgia and therefore is a citizen of the States of Delaware and/or Georgia within the meaning and intent of 28 U.S.C. § 1332.

**JURISDICTION AND VENUE**

3. Platte River is an insurance company organized and existing under the laws of the State of Wisconsin, and maintains its principal place of business at 1600 Middleton Commons, Suite 300, Middleton, Wisconsin. Platte River is a citizen of the State of Wisconsin within the meaning and intent of 28 U.S.C. § 1332.

4. At the time of filing of the Complaint and this Removal Petition, there exists complete diversity of citizenship between Plaintiff and Platte River.

5. The Court maintains jurisdiction over this contract action pursuant to 28 U.S.C. § 1332, as the amount in controversy exceeds \$75,000.00, and Platte River and the Plaintiff are citizens of different states.

6. Venue is proper in the United States District Court, Western District of New York, among other venues, as it is a judicial district where the cause of action arose.

7. On or about May 12, 2017, Plaintiff commenced an action in the Supreme Court, County of Erie, State of New York, by filing a Summons and Complaint with the Clerk of said Court. A copy of the Summons and Complaint is attached hereto as **Exhibit "A"** and made a part hereof.

8. On or about May 17, 2017, Platte River was served with a copy of the Summons and Complaint by service upon the Superintendent of Financial Services. This Notice of Removal is filed within thirty days of service of the Complaint upon the defendant as required by

28 U.S.C. §1446(b). A copy of the affidavit of service is attached hereto as **Exhibit “B”** and made a part hereof.

9. Pursuant to CPLR § 311(a)(1), Platte River’s time to serve an answer or otherwise appear has not yet expired.

10. Upon information and belief, and as it appears from the Complaint Plaintiff seeks recovery of at least \$144,555.49.

11. By reason of the foregoing, this action may be removed to this Court by the defendant pursuant to 28 U.S.C. § 1441.

12. A copy of all process, pleadings, and orders served upon defendant is annexed and filed with this notice. To date, the only documents in the state court action which Plaintiff served upon Platte River is the Summons and Complaint and Notice of Commencement of Action Subject to Mandatory Electronic Filing.

13. Pursuant to 28 U.S.C. § 1446(d), Platte River has provided written notice of the filing of this notice to counsel for plaintiff, who is the only other party to this action. An affidavit of service of this Notice of Removal, complete with all attachments, was filed contemporaneously with this Court.

14. A copy of this Notice of Removal will be electronically filed with the Clerk of the Supreme Court of the State of New York, County of Erie, as required by 28 U.S.C. § 1446(d), under Erie County Index Number 806341/2017.

**WHEREFORE**, defendant requests that this action now pending in the Supreme Court of the State of New York, County of Erie, be removed to this Court.

Dated: Rochester, New York

June 14, 2017

**McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP**  
*Attorneys for Defendant,  
Platte River Insurance Company*

By: s/Theodore M. Baum

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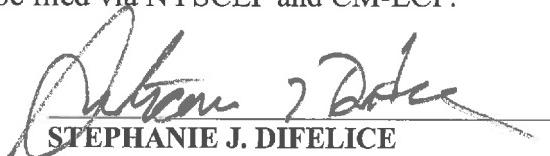
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STATE OF NEW YORK )  
                        ) SS:  
COUNTY OF MONROE )

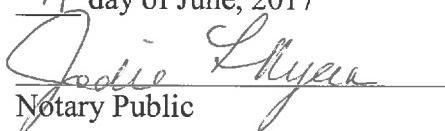
STEPHANIE J. DIFELICE, being duly sworn, deposes and says that she resides in the Town of Penfield; that she is over eighteen years of age; that she is a Legal Assistant with the law firm of McElroy, Deutsch, Mulvaney & Carpenter, LLP, *attorneys for Platte River Insurance Company*, that on the 14<sup>th</sup> day of June, 2017 before 5:00 p.m., in the City of Rochester, County of Monroe, and State of New York, deponent served a true copy of a **Notice of Removal and Civil Cover Sheet**, enclosed in a prepaid, properly addressed envelope on each of the following attorneys (or parties) at the address set forth after said attorney's (or party's) name, that being the address designated by said attorney (or party) for that purposes, by causing same to be delivered to a U.S. Postal Service depository located in Rochester, New York, addressed to:

Seth L. Hibbert, Esq.  
GETMAN & BIRYLA, LLP  
800 Rand Building  
14 Lafayette Square  
Buffalo, New York 14203-1995

and further caused an electronic copy to be filed via NYSCEF and CM-ECF.

  
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STEPHANIE J. DIFELICE

Sworn to before me this  
14 day of June, 2017

  
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Jodie L. Ryan  
Notary Public

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JODIE L. RYAN  
Notary Public, State of New York  
Qualified in Albany County  
No. 6098141  
Commission Expires 09-02-2019